

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

10 APR 30 PM 2:51
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

<p>IN THE MATTER OF MORAN BEEF, INC., Respondent</p>	<p>ANSWER AND REQUEST FOR HEARING Docket No. CWA-07-2010-0080</p>
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COMES NOW the Respondent, Moran Beef, Inc., by and through his attorney, Eldon L. McAfee, and for his Answer to the EPA's Complaint and Notice of Opportunity for Hearing, states:

1. Respondent admits paragraph 1.
2. Respondent denies paragraph 2.
3. Respondent admits paragraph 3.
4. Respondent admits that the animal feeding operations are located at the address alleged in paragraph 4.
5. Respondent admits paragraph 5.
6. Respondent admits paragraph 6.
7. Respondent admits paragraph 7.
8. Respondent admits paragraph 8.
9. Respondent admits paragraph 9.
10. Respondent admits paragraph 10.

11. Respondent admits paragraph 11.
12. Respondent admits paragraph 12.
13. Respondent admits paragraph 13.
14. Respondent admits paragraph 14.
15. Respondent admits paragraph 15.
16. Respondent admits paragraph 16.
17. Respondent admits paragraph 17.
18. Respondent admits paragraph 18.
19. Respondent admits paragraph 19.
20. Respondent denies paragraph 20 for lack of information sufficient to form
a belief.
21. Respondent admits paragraph 21.
22. Respondent denies paragraph 22.
23. Respondent admits paragraph 23.
24. Respondent admits paragraph 24.
25. Respondent admits paragraph 25.
26. Respondent denies paragraph 26.
27. Respondent denies paragraph 27.
28. Respondent denies paragraph 28.
29. Respondent denies paragraph 29.
30. Respondent denies paragraph 30.
31. Respondent denies paragraph 31.
32. Respondent admits paragraph 32.

33. Respondent denies paragraph 33.
34. Respondent denies paragraph 34.
35. Respondent denies paragraph 35.
36. Respondent admits paragraph 36.
37. Respondent denies paragraph 37 for lack of information sufficient to form a belief.
38. Respondent admits paragraph 38.
39. Respondent admits paragraph 39.
40. Respondent admits paragraph 40.
41. Respondent admits paragraph 41.
42. Respondent admits paragraph 42.
43. Respondent admits paragraph 43.
44. Respondent admits paragraph 44.
45. Respondent admits paragraph 45.
46. Respondent admits paragraph 46.
47. Respondent admits paragraph 47.

DEFENSES TO PROPOSED CIVIL PENALTY

Respondent submits that the EPA's proposed penalty is inappropriate considering the statutory factors and specific facts of this case.

1. EPA alleges that Moran Beef is a large CAFO and is therefore subject to the Clean Water Act as a point source. However, Moran Beef consists of a totally enclosed deep bedded confinement barn and an open feedlot. At the time of the June 4, 2009 EPA inspection, the open feedlot had 623 cattle and the confinement building had

862 cattle. Under EPA regulations, the numbers of cattle in the confinement barn and the open lot are added together if the two operations are adjoining. In this case, crop ground separates the two operations. Under the regulations effective February 12, 2003, only the animal production areas are included in the definition of animal feeding operation and land areas where no production occurs are excluded. See Fed. Reg. Vol. 68, No. 29, Feb. 12, 2003, pp. 7196-7197. Accordingly, Moran Beef's open lot and confinement barn are not adjoining and therefore neither operation is a large CAFO subject to Clean Water Act discharge requirements.

2. EPA's sample results from the samples taken on October 30, 2009, referenced in ¶26 of the Complaint, do not show that a discharge of pollutants from the Moran Beef open lot occurred in that one sample was taken from a drainage pipe with very little water in it and the water in the drainage pipe came from surface flow over a cornfield that is in between the open lot and the sampling point. Any pollutants that are in the samples collected that day are more likely than not to have come from the more than twenty acres of cornfield that drain to this discharge point. In addition, even if EPA's sampling results could be proven to show a discharge, contrary to the allegations in ¶'s 27 and 29 of the Complaint, EPA has at the most proof of one discharge event. Due to the real world variability in precipitation and runoff that may or may not occur from any particular runoff event, EPA cannot extrapolate one sampling as proof of discharges on other days.

3. During the EPA site inspection on June 4, 2009, Mr. Trevor Urban of the EPA expressly told Frank Moran and his consultant, Joe Turner, that Moran Beef should not proceed with constructing runoff controls on the open lot until Moran Beef received


his inspection report. That report is date stamped September 25, 2009. Due to the date of receipt of the report, it was not possible for Moran Beef to get the necessary permit work accomplished and initiate construction during the 2009 construction season. Moran Beef is now proceeding with an NPDES permit and construction of the necessary controls.


REQUEST FOR A HEARING

Pursuant to 40 C.F.R. section 22.15(c), Respondent requests a hearing on the issues raised in the Complaint and in this Answer.

Dated this 27th day of April, 2010.

BEVING, SWANSON & FORREST, P.C.


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CERTIFICATE OF SERVICE	
The undersigned certifies that the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause herein at their respective addresses disclosed on the pleadings of record on the <u>26th</u> day of <u>April</u> , 20 <u>10</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Federal Express <input type="checkbox"/> Other: _____
Signature:	<u></u>

Original and one copy to:

Regional Hearing Clerk
U.S. EPA
Region VII
901 North 5th Street
Kansas City, KS 66101

Copy to:

William A. Spratlin, Director
Chris Muehlberger, Asst. Regional Counsel
U.S. EPA
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Kansas City, KS 66101

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